IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 157 of 2005

1. Kuldeep Singh S/o Sri Gurbachan Singh
2. Smt. Rajvinder Kaur W/o Sri Kuldeep Singh,
   Both R/o Village & Post Baintwala,
   Tehsil Kashipur,
   District Udham Singh Nagar. …… Appellants

Versus

1. Indrajeet Singh Kohli,
   R/o Kohli Battery Service,
   Ranikhet Road, Ramnagar,
   District Nainital.
2. National Insurance Company Ltd.,
   Branch Kashipur,
   Through Mandaliya Prabandhak,
   National Insurance Company Ltd.,
   Mandaliya Karyalaya, Haldwani,
   District Nainital. …. Respondents

Sri B.M. Pingal, Advocate for the appellants.
None for respondent 1.
Sri D.S. Patni and Mr. Manish Dalakoti, Advocates for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUTPA, C. J. (Oral)

This is claimants' appeal U/s 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Motor Accident Claim Tribunal / Additional District Judge, Udham Singh Nagar vide Award dated 30.09.2004 passed in M.A.C.P. No. 280 of 2003.

2. The claimants, who are unfortunate parents of deceased Km. Ranjeet Kaur, claimed compensation of Rs. 5,00,000/- for her death in the motor accident on 08.11.2003 when the Tractor bearing registration No. URN 4978, in which she was travelling, was dashed by the Bus bearing registration No. UA 04 3353 resulting in serious injuries to Km. Ranjeet Kaur, who succumbed to those injuries on the

spot itself. The claimants pleaded that their daughter Km. Ranjeet Kaur was aged about 21 years and used to earn Rs. 4,000/- per month from tailoring work.

3. The owner and insurer of the Bus contested the claim and denied their liability to pay compensation to the claimants. The owner took the plea that the driver of the Tractor was negligent and as such, was responsible for the accident. The insurer, on the other hand, pleaded that the Bus was being plied in breach of the policy conditions and the driver was not holding a valid driving license.

4. The claimants examined P. W. 1 Kuldeep Singh and P.W. 2 Raja Ram in support of their claim, whereas the owner of the Bus examined DW1 Mohan Chand Tewari.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that the claimants' daughter Km. Ranjeet Kaur died on account of the injuries sustained by her in the motor accident on 08.11.2003; the accident occurred due to the rash and negligent driving of the drivers of both the vehicles i.e. Tractor and Bus; and the insurer of the Bus was liable to pay 50% of the compensation assessed by the Tribunal.

6. The Tribunal did not believe the evidence led by the claimants about the income of the deceased and assessed her income at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule U/s 163-A of the Motor Vehicles Act. By deducting 1/3rd of Rs. 15,000/- as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with multiplier of '8', the compensation was worked out to Rs. 80,000/. The Tribunal further awarded Rs. 2000/- towards Funeral Expenses and thus, the total compensation was assessed at Rs. 82,000/-. As the

liability of the insurer of the Bus was to the extent of 50% of the compensation assessed by the Tribunal, the insurer was directed to pay Rs. 41,000/- as compensation to the claimants with interest at the rate of 6% per annum from the date of the claim petition i.e. 23.12.2003.

7. Mr. B.M. Pingal, the learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing her income at Rs. 15,000/- per annum only; in selecting the lower multiplier of '8'; and in awarding low compensation of Rs. 41,000/- only.

8. Mr. D.S. Patni and Mr. Manish Dalakoti, the learned counsel for respondent No. 2 National Insurance Company Ltd., on the other hand, supported the Award and submitted that as the claimants could not establish the income of the deceased pleaded by them, the Tribunal was left with no other option but to assess her income on the basis of notional income prescribed in the Second Schedule U/s 163 A of the Motor Vehicles Act.

9. The findings recorded by the Tribunal that claimants' daughter Km. Ranjeet Kaur died on account of the injuries sustained by her in the motor accident on 08.11.2003; the accident occurred due to the rash and negligent driving of the drivers of both the vehicles i.e. Tractor and Bus; and the insurer of the Bus was liable to pay 50% of the compensation assessed by the Tribunal have, now, attained finality as the respondents have not filed any appeal against the Award.

10. Claimants' daughter Km. Ranjeet Kaur was aged about 30 years on the date of the accident. True, the evidence led by the claimants about the income of the deceased was not of clinching nature and as such, the Tribunal has rightly discarded the same.

Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 15,000/- per annum requires re-consideration, as the notional income of Rs. 15,000/- in the Second Schedule U/s 163-A of the Motor Vehicles Act was prescribed in the year 1994 and the accident, in the present case, took place in the year 2003. If the depreciation in the purchase value of Rupee and the steep rise in the cost of living during the period between 1994 and 2003 is taken into account, the notional income of Rs. 15,000/- prescribed in the year 1994 would, in the year 2003, come to Rs. 30,000/- per annum. We, therefore propose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum.

11. By deducting 1/3rd of Rs. 30,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 20,000/- per annum.

12. Considering that the claimants are parents of deceased Km. Ranjeet Kaur; the age of deceased Km. Ranjeet Kaur, on the date of the accident, was 30 years; and the claimants are aged about 45 years and 43 years respectively, the multiplier of '10', in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731,** would be appropriate in the case.

13. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '10', the compensation works out to Rs. 2,00,000/-. The claimants are further entitled to receive Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Estate. Thus, the claimants become entitled to receive Rs. 2,10,000/- as compensation for the death of their daughter Km. Ranjeet Kaur in the motor accident.

14. As the liability of the insurer of the Bus is to the extent of 50% of the amount of compensation of Rs. 2,10,000/- (Rupees Two Lakhs

and Ten Thousand only) and a sum of Rs. 41,000/- has already been deposited by the insurer before the Claims Tribunal in satisfaction of the impugned Award, the insurer, now, is liable to pay a further sum of Rs. 64,000/- (Rupees Sixty Four Thousand only) to the claimants.

15. The claimants are further entitled to receive interest on the enhanced amount of compensation. The accident took place on 08.11.2003 and the claim petition was filed on 23.12.2003. The impugned Award was passed by the Tribunal on 30.09.2004 and the amount of compensation is being enhanced today i.e. 01.11.2006. Taking the above-mentioned relevant factors into account, we quantify the amount of interest on the enhanced amount of Rs. 64,000/- at Rs. 10,000/- (Rupees Ten Thousand only).

16. For the foregoing reasons, the appeal filed by the claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 41,000/- awarded by the Tribunal is enhanced to Rs. 1,05,000/- (Rupees One Lakh and Five Thousand only) with further quantified amount of interest of Rs. 10,000/- (Rupees Ten Thousand only) on the enhanced amount of compensation. Respondent No. 2 National Insurance Company Ltd. is directed to deposit the enhanced amount of compensation of Rs. 64,000/- along with the quantified interest of Rs. 10,000/- within a period of two months from today before the concerning Claims Tribunal.

17. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C. J.)**
01.11.2006 01.11.2006

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